

² The application for hearing filed by the claimant alleges injury to the “back, both legs, knees, and all other parts of the body affected.”

Claimant contends the work he began performing on January 4, 2010, which was much more strenuous than what he had previously performed, aggravated his low back. He also argues that Dr. Edward J. Prostic was the only orthopedic specialist to provide an opinion regarding the cause of claimant's back injury and, therefore, it is uncontradicted that claimant injured his back at work. Claimant requests the Board to affirm the preliminary hearing Order.

The only issue before the Board on this appeal is whether claimant injured his back in January 2010 in an accident that arose out of and in the course of his employment with respondent.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the whole evidentiary record filed herein, this Board Member makes the following findings of fact and conclusions of law:

Claimant has worked 31 years for the respondent, Ruskin Manufacturing, which manufactures air duct shutoff valves. After working 11 years in the receiving department, he was bumped from that position. In early January 2010 claimant began working on the finals line, where he leaned over a table while bolting 10 pound motors onto dampers. After testing the installed motor, the damper unit is wrapped and set aside. During the work day claimant handled from 25 to 30 dampers, which would weigh from 5 up to 260 or 280 pounds.³ Claimant had to drag the heavy dampers down the line.

With his change of job duties, claimant began experiencing pain in his low back. Claimant testified that between January 4 and January 14, 2010, the pain in his low back worsened due to the repetitive lifting he was doing at work. He also testified that on January 14 he experienced an immediate increase in his low back pain when he twisted while dragging a 100-pound damper unit. Claimant reported the incident to both his lead person and foreman.

After working on January 15, 2010, and reporting additional low back pain, claimant was advised by respondent's human resources manager to see a doctor. Accordingly, claimant saw his personal doctor, Dr. Stanley W. Haag, on January 18, 2010, and was given work restrictions. Claimant has not worked for respondent or any other employer since January 15.

This is not the first time that claimant has experienced back problems. He sustained two compressed vertebrae in April 2002 when a truck rear-ended a tractor he was driving. Nonetheless, claimant returned to part-time work the next month, returned to full-time work in October 2002, and by 2005 his low back symptoms had subsided. Despite the 2002

³ P.H. Trans. at 12.

accident, claimant maintains his back was pain free when he transferred to the finals line. Moreover, claimant testified that his present symptoms are different in both nature and location from those he experienced following his 2002 tractor accident.

At this juncture there is limited medical evidence in the record. A prescription form from Dr. Haag's office dated January 18, 2010, contains the following:

Pt is unable to due [sic] the type of work he is currentley [sic]. How Ever he could do light duty full time. [Secondary] old back injury until further Evaluation.⁴

A prescription form dated January 19, 2010, restricts claimant from lifting more than five pounds, bending, and twisting. A form dated January 25, 2010, restricts claimant from both lifting and pulling 15 to 20 pounds repetitively, ladders and heights, and bending, stooping, and twisting. And, finally, a form dated January 28, 2010, noted claimant was being referred for a surgical consult in Wichita and that Dr. Haag had diagnosed (1) spinal stenosis, (2) degenerative arthritis in the lumbar spine, (3) lumbar back pain, (4) chronic compression fracture at L2, and (5) bilateral L5-S1 radiculopathy.

The record also contains the March 5, 2010, report from Dr. Edward J. Prostic, who evaluated claimant at his attorney's request. Dr. Prostic recorded a history that claimant felt he had pulled a muscle in his back while pulling a 100-pound object across a line at work. The doctor concluded claimant had aggravated degenerative disc disease in his back. Dr. Prostic wrote, in part:

On or about January 4, 2010, William P. Hanigan sustained injury to his low back during the course of his employment, aggravating degenerative disc disease. He no longer has significant radicular symptoms. Appropriate treatment is anti-inflammatory medicines by mouth, therapeutic exercises, intermittent heat or ice and massage, and reduced activities at work to his tolerance (moderate level). If leg symptoms increase, epidural steroid injections will need to be considered.⁵

Based upon the above evidence, the ALJ found claimant had injured his back at work. This Board Member agrees. The evidence is overwhelming that before January 2010 claimant did not have low back symptoms that affected his ability to work. But after working on the finals line, claimant developed back symptoms that not only affect his ability to work but also required medical attention. Claimant's description of the work on the finals line is uncontradicted. Moreover, his testimony about how he developed low back pain and radiating pain into his legs from that work is persuasive.

⁴ *Ibid.*, Cl. Ex. 3 at A.

⁵ *Ibid.*, Cl. Ex. 1 at 3.

Claimant has met his burden of proof to establish that he injured his back working for respondent on its finals line in January 2010. This Board Member finds that claimant sustained personal injury by accident that arose out of and in the course of employment with respondent and affirms the April 5, 2010, Order.

By statute the above preliminary hearing findings are neither final nor binding as they may be modified upon a full hearing of the claim.⁶ Moreover, this review of a preliminary hearing Order has been determined by only one Board Member, as permitted by K.S.A. 2009 Supp. 44-551(i)(2)(A), as opposed to being determined by the entire Board when the appeal is from a final order.⁷

WHEREFORE, it is the finding of this Board Member that the Order of Administrative Law Judge Thomas Klein dated April 5, 2010, is affirmed.

IT IS SO ORDERED.

Dated this _____ day of June 2010.

HONORABLE DAVID A. SHUFELT
BOARD MEMBER

c: William L. Phalen, Attorney for Claimant
Troy A. Unruh, Attorney for Respondent and its Insurance Carrier
Thomas Klein, Administrative Law Judge

⁶ K.S.A. 44-534a.

⁷ K.S.A. 2009 Supp. 44-555c(k).